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In the Supreme Court of the United States

OCTOBER TERM, 1997

FEDERAL ELECTION COMMISSION, PETITIONER

v.

JAMES E. AKINS, RICHARD CURTISS, PAUL FINDLEY, ROBERT J. HANKS, ANDREW KILLGORE, AND ORIN PARKER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE PETITIONER

SETH P. WAXMAN
Acting Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

LAWRENCE M. NOBLE
General Counsel
Federal Election Commission
Washington, D.C. 20463

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A. Respondents lack standing to bring this suit.

1. Respondents assert (see Br. 11-12) that the dismissal of their administrative complaint by the Federal Election Commission (FEC or Commission) causes them injury as voters by depriving them of information that might assist them in their exercise of the franchise.[1] We agree with respondents that

[1] Respondents do not explicitly press the contention that they have standing as "competitors" of the American Israel Public Affairs Committee (AIPAC). Compare J.A. 11 (complaint in this lawsuit alleges that respondents "are politically active persons who * * * oppose AIPAC views on U.S.

voters are among the intended beneficiaries of the disclosure provisions of the Federal Election Campaign Act of 1971 (FECA or Act), 2 U.S.C. 431 *et seq.* See FEC Br. 26-27; *Buckley* v. *Valeo*, 424 U.S. 1, 66-68 (1976) (per curiam). Absent any basis for concluding that respondents' interests as voters serve to differentiate them from the public generally,[2] however, respondents' asserted injury amounts to nothing more than "a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens." *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975). "[T]hat harm alone normally does not warrant exercise of jurisdiction." *Ibid.*; see *Allen* v. *Wright*, 468

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foreign policy in the Middle East"; that they "compete with AIPAC in seeking to influence the views and actions of members of Congress, executive policymakers, and the public"; and that the FEC's dismissal of their administrative complaint "has given AIPAC an illegal advantage in this competition"). Respondents suggest (Br. 4), however, that their interests as "voters" include an interest in "inform[ing] other voters, government officials, and the public at large." See also *id.* at 12 (asserting that the FECA protects "the information interests of those who would inform officeholders and the public about campaign contributions, through speaking and writing"). To the extent that respondents' conception of voter standing encompasses the competitive injury more directly alleged in their complaint, respondents' argument fails for the reasons stated at pages 24-27 of our opening brief.

[2] The court of appeals at least acknowledged that "it would not be enough for standing in this case for appellants to assert only that they were voters." Pet. App. 12a. The court nevertheless concluded that respondents had standing to sue as "affected voters" because there was "nothing to indicate that [respondents] did not vote in various federal elections in which AIPAC allegedly made contributions." *Id.* at 13a. As we note in our opening brief (Br. 28), that theory would apply equally to all registered voters in the United States.

U.S. 737, 755-756 (1984). To hold that *every voter* in the country has standing to bring a suit such as this one would be especially anomalous in light of the background rule that the government's decision not to undertake an enforcement action is ordinarily not reviewable at all. See FEC Br. 23, 29.[3]

2. Amicus Common Cause asserts (Br. 20) that "respondents have standing as individuals denied procedural rights created by the FECA," on the theory that the Commission's unlawful dismissal of an administrative complaint "deprives the particular complainant of a right to have his or her complaint treated in accordance with the procedures and standards established by the FECA." That argument cannot be reconciled with *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 573 n.8 (1992), in which this Court squarely rejected the proposition that a government agency's violation of a "procedural duty satisfies the concrete-injury requirement by itself, without any showing that the procedural violation endangers a concrete interest of the plaintiff (apart from his interest in having the procedure observed)."

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[3] Apart from the narrow circumstances of 2 U.S.C. 437g(a)(8)(C), Congress completely barred private actions under the FECA and made the Commission's power to initiate civil actions the "exclusive civil remedy for the enforcement" of the Act. 2 U.S.C. 437d(e). Thus, contrary to amicus Common Cause's assertion (Br. 18 n. 15) that the Act was drafted to encourage so-called private attorneys general, Congress limited such actions to the rare occasions when the Commission unlawfully dismisses a complaint and then fails to "conform with [a court's] declaration" that the "dismissal of the complaint * * * [was] contrary to law." 2 U.S.C. 437g(a)(8)(C). See *FEC* v. *National Conservative Political Action Comm.*, 470 U.S. 480, 488-489 (1985); *Perot* v. *FEC*, 97 F.3d 553, 558 & n.2 (D.C. Cir. 1996), cert. denied, 117 S. Ct. 1692 (1997).

Accord *Common Cause* v. *FEC*, 108 F.3d 413, 419 (D.C. Cir. 1997) ("absent the ability to demonstrate a 'discrete injury' flowing from the alleged violation of FECA, [an administrative complainant] cannot establish standing merely by asserting that the FEC failed to process its complaint in accordance with law") (citing *Defenders of Wildlife*).

The argument is also inconsistent with the text of the judicial review provision under which respondents brought this suit. That provision states that "[a]ny party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1) * * * may file a petition with the United States District Court for the District of Columbia." 2 U.S.C. 437g(a)(8)(A). To file suit under that provision, a potential litigant must demonstrate that his administrative complaint was dismissed by the Commission *and* that he was "aggrieved" by the dismissal. The latter requirement would be superfluous if a complainant were deemed to possess a judicially enforceable right to a "lawful" disposition of his complaint.[4]

3. Respondents, like the court of appeals, unduly minimize the obstacles to redressability that exist in this case. Respondents assert (Br. 9) that "if AIPAC

[4] Amicus Common Cause is also wrong in asserting (Br. 21) that the Act affords a right to "personal participation" by administrative complainants once their complaints are filed with the Commission. After that point, it is the administrative respondent—not the administrative complainant—who has certain statutory rights to be notified and to respond. See 2 U.S.C. 437g(a)(2)-(6). Indeed, an administrative complainant is not entitled to learn about the substance of any Commission investigation undertaken in response to his complaint until the Commission's proceeding is concluded. 2 U.S.C. 437g(a)(12).

has a legal obligation to disclose the beneficiaries and amounts of its campaign contributions, the Commission has authority to order AIPAC to disclose this information." That is incorrect. The FECA does not authorize the Commission to issue such enforcement orders. If the Commission finds "probable cause" to believe that a private party has violated the Act, it may attempt to negotiate a conciliation agreement. 2 U.S.C. 437g(a)(4)-(5).[5] If that effort is unsuccessful,

[5] Nothing in the FECA, however, would require that such a conciliation agreement must provide for disclosure by AIPAC of prior receipts and disbursements. See FEC Br. 29-30. Nor would any conciliation agreement be subject to judicial review. Compare 2 U.S.C. 437g(a)(5) with 2 U.S.C. 437g(a)(8)(A).

Respondents rely (see Br. 10 n.5) on the court of appeals' assertion that "if the Commission gave only lip service to compliance with our order and settled with AIPAC without requiring disclosure, * * * [respondents] would be able to seek disclosure directly" under 2 U.S.C. 437g(a)(8)(C). Pet. App. 15a. We see no basis for the court's conclusion. Section 437g(a)(8)(C) provides that a reviewing court "may declare that the [Commission's] dismissal of the [administrative] complaint is contrary to law, and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint." The administrative complainant's right to file his own suit against the alleged violator is thus made contingent upon the Commission's failure to "conform with" the court's declaration.

If a court declares that the FEC has acted upon an erroneous understanding of the Act's "political committee" provisions, however, the Commission would not necessarily fail to "conform with" that declaration by settling with AIPAC upon terms that do not require the reconstruction of records that would be necessary to comply with the broad disclosure requirements applicable to political committees. Rather, the FEC should enjoy substantial authority to utilize a variety of

the Commission may institute a civil enforcement action in federal district court. 2 U.S.C. 437g(a)(6).[6] Nothing in the Act, however, authorizes the FEC to issue a remedial order that is binding on any private party. Even judicial review under 2 U.S.C. 437g(a)(8) of the Commission's dismissal of respondents' administrative complaint is "merely preliminary," because "authoritative judicial construction * * * [must] await actual enforcement" against AIPAC in an enforcement suit in which AIPAC's arguments and defenses would be presented and considered. *FEC* v. *National Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992). Thus, in contrast to the rulemakings and adjudications that are the typical subjects of Administrative Procedure Act review, the agency action (*i.e.*, the filing of an enforcement suit)

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settlement terms and conditions—*e.g.*, monetary penalties or commitments regarding future compliance—in light of such factors as the seriousness of the violation and the apparent good faith (or lack thereof) of the alleged violator. Cf. *Shepard* v. *NLRB*, 459 U.S. 344, 350-351 (1983). Neither 2 U.S.C. 437g(a)(8) nor any other provision of the FECA clearly authorizes a court to override the Commission's prosecutorial discretion by declaring that it is obligated either to negotiate a settlement that provides for broad disclosure of past receipts and disbursements, or to pursue an enforcement action seeking such relief. Particularly in light of the "general presumption of unreviewability" of an agency's decision not to undertake an enforcement action, *Heckler* v. *Chaney*, 470 U.S. 821, 834 (1985), the FECA's judicial review provision should not be read to accomplish that result.

[6] Even when mandatory conciliation attempts fail to produce a settlement agreement, however, the Commission is not required to initiate litigation. See 2 U.S.C. 437g(a)(6)(A) ("Commission *may*, upon an affirmative vote of 4 of its members, institute a civil action.") (emphasis added).

that respondents seek to compel will not, in and of itself, provide respondents with any relief.

Respondents' prospects of obtaining the disclosures they seek are therefore doubly attenuated. Unlike plaintiffs who file suit under the Freedom of Information Act, 5 U.S.C. 552, respondents do not seek to obtain information that is actually in the possession of the government; they seek to enlist the Commission's assistance in acquiring information from a private party not before the court. See FEC Br. 23-24 n.7. Second, the Commission cannot itself compel AIPAC to disclose whatever relevant information may remain in its possession, but must (absent a negotiated settlement) attempt to persuade another decisionmaker (a court) to order such relief. Compare *Defenders of Wildlife*, 504 U.S. at 568-571 (plurality opinion) (plaintiffs failed to establish redressability where any order running against the defendant agency would not be binding on a different agency whose conduct was the actual source of any injury plaintiffs might suffer). Respondents therefore cannot show that it is "'likely,' as opposed to merely 'speculative,'" *id.* at 561 (quoting *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38, 43 (1976)), that resolution in their favor of the "political committee" issue will ultimately lead to disclosure of AIPAC's receipts and disbursements.[7]

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[7] As we explain in our opening brief (see Br. 10 n.5, 30-31 & n.11), AIPAC has consistently maintained that the alleged contributions in this case involved communications to its own members, which are specifically exempted from the statutory definition of "expenditure." During the pendency of the appeal in this case, the D.C. Circuit held that the FEC's regulatory definition of the term "member" was unduly restrictive. See *Chamber of Commerce* v. *FEC*, 69 F.3d 600, 604-606 (1995),

B. If this Court holds that respondents have standing to bring their suit, the judgment of the court of appeals should be reversed on the merits.

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reh'g denied, 76 F.3d 1234 (D.C. Cir. 1996); FEC Br. 31 n.11. That decision, as we note in our opening brief (see Br. 31 n.11), adds an additional element of uncertainty concerning respondents' prospects of ultimately obtaining an order compelling disclosure of AIPAC's receipts and disbursements.

We do not agree, however, with AIPAC's assertion as amicus curiae (Br. 18) that the case is moot because it is "readily apparent that the Commission would" find AIPAC's supporters to be "members" if the FEC were to revisit the issue. The Commission has not had occasion to determine, in light of *Chamber of Commerce*, whether the recipients of AIPAC's communications were "members," and thus, in the Commission's view, that question is an open one. The D.C. Circuit itself acknowledged in its opinion on petition for rehearing in *Chamber of Commerce* that the "Commission still has a good deal of latitude in interpreting" the term "member." 76 F.3d at 1235. Indeed, the decision in *Chamber of Commerce* was issued *before* the en banc court's decision in the instant case, suggesting that the D.C. Circuit did not regard *Chamber of Commerce* as definitively resolving the question whether the recipients of AIPAC's communications were "members." In light of the Commission's own uncertainty regarding the impact (if any) of *Chamber of Commerce* on the FEC's prior membership determination in this case, cf. *SEC* v. *Chenery Corp.*, 318 U.S. 80, 88 (1943) (judicial review of agency action is typically confined to consideration of the grounds on which the agency based its decision), and the virtual absence of briefing on the question, there is no reason for this Court itself to resolve the issue in the first instance.

The Commission is now considering revising its rules governing who is a "member" of a membership association. On July 31, 1997, it published an Advance Notice of Proposed Rulemaking seeking comments from the public. 62 Fed. Reg. 40,982. No new regulation has yet been promulgated.

1. In our opening brief, we explain (Br. 31-49) that the Commission did not act "contrary to law" when it found no probable cause to believe that AIPAC was a "political committee" within the meaning of the FECA, because campaign-related activity was not the organization's "major purpose." The "major purpose" test, first announced in *Buckley*, 424 U.S. at 79, and reaffirmed in *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (*MCFL*), serves to ensure that occasional election-related disbursements do not subject an organization to the comprehensive disclosure requirements, covering all receipts and disbursements, that are applicable to political committees under the FECA.

Respondents' brief contains repeated references (see Br. 5, 13, 15 n.8, 22, 23, 25) to "the FEC's major purpose test," suggesting that the test had its genesis in a discretionary determination made by the Commission. In fact, the "major purpose" test was announced by this Court in *Buckley* and squarely reaffirmed in *MCFL*. We acknowledge that the text of 2 U.S.C. 431(4)(A), the FECA provision that defines the term "political committee," contains no "major purpose" limitation. The question in this case, however, is not whether the FEC has authority to recognize such a limitation on its own initiative, but whether it can be said to have acted "contrary to law" in adhering to the construction of the Act previously announced by this Court.[8]

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[8] The Commission has determined, for the reasons stated at pages 43-46 of our opening brief, that the justifications for the "major purpose" test apply with equal force whether the disbursements that trigger the reporting requirements are independent expenditures or direct contributions. See p. 10, *infra*. That determination might be characterized as a discretionary

2. The court of appeals' decision in this case was based primarily on its conclusion that the "major purpose" test is inapplicable to any organization that makes more than $1,000 in campaign contributions or coordinated expenditures (as opposed to independent expenditures) in a calendar year. See FEC Br. 43; Pet. App. 24a-25a. As we explain in our opening brief (Br. 43-48), that view is incorrect: the justifications for the "major purpose" test apply with equal force whether the disbursements that trigger the reporting requirements are independent expenditures or direct contributions. Respondents defend the court of appeals' judgment, but on a quite different theory. In respondents' view, the "major purpose" test serves to identify those disbursements that are "expenditures" within the meaning of the FECA. They contend (Br. 13 n.7) that any disbursement whose "major purpose" is to influence elections is an "expenditure." In respondents' view, any organization that makes "expenditures" (so defined) in excess of $1,000 in a year is a "political committee," whatever the primary purpose or purposes of the organization as a whole, "except to

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judgment on the part of the Commission, since this Court—while articulating the "major purpose" test in terms that draw no distinction between contributions and independent expenditures—has not explicitly addressed the question. Insofar as the propriety of that judgment is relevant to the Court's disposition of the case, the FEC's view should be accorded deference. See *FEC* v. *Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 37 (1981) (FEC "is precisely the type of agency to which deference should presumptively be afforded").

the extent a [distinct] constitutional exemption * * * applies." *Ibid.*[9]

That view cannot be reconciled with this Court's precedents. In *Buckley*, the Court stated that "[t]o fulfill the purposes of the Act [the words 'political committee'] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S. at 79. The phrase "major purpose of which" refers neither to expenditures nor to contributions, but to "organizations." Respondents' view of the "major purpose" test is further undermined by the ensuing pages of the *Buckley* opinion, which addressed the term "expenditure" as it applies to independent expenditures made by individuals and by groups other than "political committees." See *id.* at 79-82. The Court construed the term as "reach[ing] only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.* at 80 (footnote omitted). The Court did not suggest that it was articulating two different tests for an independent expenditure—*i.e.*, one employing the "express advocacy" requirement when applied to individuals and to groups other than political committees, and another employing the "major purpose" test to identify those disbursements counting towards the $1,000 threshold for political committee status. Nor have respondents offered any reason for the formulation of alternative tests.

This Court's decision in *MCFL* reaffirmed that the relevant focus is on the *organization's* major purpose,

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[9] The same rationale was suggested, though not definitively endorsed, by the court of appeals as a possible alternative ground for its decision. See Pet. App. 26a; FEC Br. 39-40.

not the major purpose of an individual disbursement. As our opening brief explains (see Br. 33-37), the *MCFL* plurality deemed it "undisputed" that MCFL was not a "political committee" because "[i]ts central organizational purpose [wa]s issue advocacy," 479 U.S. at 252 n.6, notwithstanding the fact that MCFL had made independent expenditures of nearly $10,000 that "represent[ed] express advocacy of the election of particular candidates." *Id.* at 249-250. The majority observed that "should MCFL's independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee." *Id.* at 262. *MCFL* makes clear that it is "the organization's major purpose," *ibid.*—not the major purpose of any particular disbursement—that is dispositive of the "political committee" inquiry.

Respondents make little effort to reconcile their position with this Court's articulation, in *Buckley* and *MCFL*, of the criteria for "political committee" status.[10] They rely instead (Br. 15-19) on two lower

[10] Respondents suggest (Br. 21) that the test for "political committee" status articulated by the Court in *MCFL*—*i.e.*, whether the organization's campaign-related spending is "so extensive that the organization's major purpose may be regarded as campaign activity," 479 U.S. at 262—applies only to "small" organizations, and that "wealthy" organizations are governed by the $1,000 ceiling. Nothing in *MCFL* supports that proposition. In explaining why MCFL was not a political committee, the plurality did not allude to the organization's size or wealth, but simply stated that "[i]ts central organizational purpose is issue advocacy, although it occasionally engages in activities on behalf of political candidates." *Id.* at 252 n.6. And in describing the circumstances under which MCFL would *become* a political committee, the Court simply invoked the *Buckley* standard—a standard that applies, by its

court decisions—*United States* v. *National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972) (*NCFI*), and *American Civil Liberties Union, Inc.* v. *Jennings*, 366 F. Supp. 1041 (D.D.C. 1973) (*ACLU*), vacated as moot *sub nom. Staats* v. *American Civil Liberties Union, Inc.*, 422 U.S. 1030 (1975)—that were cited by this Court in *Buckley*. See 424 U.S. at 79 n.106 ("At least two lower courts, seeking to avoid questions of unconstitutionality, have construed the disclosure requirements imposed on 'political committees' * * * to be nonapplicable to nonpartisan organizations."). Respondents' approach is flawed in two respects.

First, the lower court decisions on which respondents rely are themselves ambiguous with respect to the question presented here. The Second Circuit's opinion in *NCFI* contains language supporting both approaches to the identification of "political committees." On the one hand, the *NCFI* court stated that it would "construe the Act to apply only to committees soliciting contributions or making expenditures the major purpose of which is the nomination or election of candidates," 469 F.2d at 1141—language that might

terms, to organizations of all sizes and degrees of prosperity. See *id.* at 262 (citing *Buckley*, 424 U.S. at 79). The Court then observed that if electoral activity came to be the organization's major purpose, MCFL "would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns." *Ibid.* It concluded that "there is no need for the sake of disclosure to treat MCFL any differently than other organizations that only occasionally engage in independent spending on behalf of candidates." *Ibid.* The clear thrust of the Court's analysis was that the relative infrequency of MCFL's political spending, not its small size or lack of wealth, prevented it from being subject to the Act's political committee provisions.

plausibly be construed as suggesting that the inquiry should focus on the purpose of particular receipts and disbursements.[11] On the other hand, the court observed that under its construction of the FECA, federal officials enforcing the Act "will be forced to glean the principal or major purpose of the organizations they seek to have comply with the Act." *Id.* at 1142. The court noted as well that "the words of the Act seem to indicate that Congress' concern was primarily with groups organized or at least authorized by a particular candidate and whose principal focus is a specific campaign." *Id.* at 1140. Those passages suggest that the overall character of the organization should be dispositive of the "political committee" question.

In any event, close analysis of the lower court decisions cited by the *Buckley* Court would be appropriate only if such analysis were helpful in resolving an ambiguity in *Buckley* itself. As we explain above, no such ambiguity exists. Rather, the *Buckley* Court stated unequivocally that an organization will be considered a political committee only if the *organization's* major purpose is campaign activity.[12] The

[11] Even that passage, however, supports respondents' position only if the phrase "of which" is taken to refer to individual receipts and disbursements. If the words "contributions" and "expenditures" are understood to refer to the organization's financial activities *in the aggregate*, an inquiry that focused on the major purpose of those "contributions" and "expenditures" would in practical effect be an inquiry into the major purpose of the organization as a whole.

[12] The *Buckley* Court stated that the decisions in *NCFI* and *ACLU* had "construed the disclosure requirements imposed on 'political committees' * * * to be nonapplicable to nonpartisan organizations." 424 U.S. at 79 n.106. This Court evidently

Court reaffirmed that conclusion in *MCFL*. Respondents' apparent view that this Court in *Buckley* misconstrued the lower court decisions in *NCFI* and *ACLU* (but see n. 12, *supra*) provides no justification for the court of appeals' conclusion that the Commission acted "contrary to law" when it applied this Court's "major purpose" test according to its terms.

Moreover, respondents have failed to show how a test focusing on the "major purpose" of a particular disbursement would address the practical and constitutional problems that led to this Court's limiting construction of the Act's political committee provisions. A political committee is required to make comprehensive disclosures of *all* of its receipts and disbursements, even those that bear no direct relation to electoral campaigns. See, *e.g.*, 2 U.S.C. 434(b)(3)(G), 434(b)(6)(B)(v). This Court has construed "political committee" narrowly out of concerns that small amounts of campaign-related expenditures by an organization primarily engaged in issue advocacy could trigger a far-reaching obligation to report all of its non-campaign-related receipts and disbursements. Respondents do not explain how the narrowing con-

interpreted those decisions as focusing on the character of the organization rather than on the character of a particular disbursement. In any event, the Court's recognition that the *NCFI* and *ACLU* courts had "construed the words 'political committee' more narrowly" in order to avoid a constitutional problem, see 424 U.S. at 79, does not mean that the Court itself adopted the *same* narrowing construction. Whatever uncertainty might exist concerning the *Buckley* Court's understanding of the *NCFI* and *ACLU* decisions, the test that the Court *adopted* focuses unambiguously on the primary purpose of the organization.

struction of the term "expenditure" that they advocate would address that problem.[13]

3. Respondents also suggest (Br. 23) that the Commission can mitigate any burden on expressive activity not directly related to elections by "limit[ing] disclosure orders to just the campaign-related activities." That argument is seriously flawed. First, the Commission has no authority to issue "disclosure orders." If the Commission finds probable cause to believe that a violation of the Act has occurred, its only recourse is to attempt to reach a settlement through conciliation and, if unsuccessful, to file a lawsuit in federal district court. 2 U.S.C. 437g(a)(4)-(6); see pp. 5-6, *supra*. Second, respondents' argument is inconsistent with *Buckley* and *MCFL*.

[13] Respondents discuss (Br. 2-3, 20-21, 25) the constitutional exception to 2 U.S.C. 441b's prohibition on corporate independent expenditures recognized in *MCFL* for a small class of nonprofit issue advocacy corporations that do not accept financial support from business corporations or unions (see FEC Br. 9 n.3), and the constitutional exemption from reporting contributors' names recognized in *Brown* v. *Socialist Workers '74 Campaign Committee*, 459 U.S. 87 (1982), for political groups whose supporters are subject to reprisal. Those holdings involve narrow constitutional exceptions from other statutory requirements, prompted by different policy concerns. The question whether an organization is entitled to an *MCFL* or *Brown* exemption is separate and distinct from the question whether it is a "political committee." Thus, nothing in this Court's decisions suggests that an organization whose major purpose is not campaign-related may nevertheless be deemed a political committee simply because it fails to qualify for an *MCFL* or *Brown* exemption. Conversely, an organization that *does* qualify for an *MCFL* or *Brown* exemption remains subject to the same standard as any other organization—the "major purpose" test—for determining its "political committee" status. See n.10, *supra*.

Those decisions responded to constitutional concerns by announcing a limiting construction of the term "political committee," not by exempting (or authorizing the Commission to exempt) any such committees from the Act's disclosure requirements. Finally, although it might be possible to segregate an organization's campaign-related *disbursements*, political committees are also required, *inter alia*, to disclose all of their *receipts*, whether or not they are specifically earmarked by the donor for campaign activity. See, *e.g.*, 2 U.S.C. 434(b)(3)(G). Respondents' approach therefore would not fully address the difficulties that the "major purpose" test was intended to resolve.[14]

As we note in our opening brief (Br. 48), moreover, the determination that an organization is not a political committee does not serve to "exempt" (Resp. Br. 24) its campaign contributions from the FECA's disclosure requirements. The Act requires the filing of disclosure reports by any person who makes inde-

[14] In addition, unlike lobbying or charitable organizations, political committees are prohibited from receiving contributions exceeding $5,000 from any one person, 2 U.S.C. 441a(a)(1)(C), and cannot accept any contributions at all from corporations or unions, 2 U.S.C. 441b(a). Respondents do not explain how those restrictions would apply to groups that are primarily engaged in non-campaign-related activities, but are nevertheless found (under respondents' theory) to be political committees because their electoral spending exceeds the $1,000 threshold. It is not clear, for example, whether (under respondents' view of the FECA) every donation would be deemed a "contribution" within the meaning of the Act—in which case the ability of such organizations to raise funds would be seriously constrained—or whether some further test would be necessary to distinguish "contributions" from donations intended to support the organization's non-campaign-related activities.

pendent expenditures aggregating more than $250 in a calendar year. 2 U.S.C. 434(c) (1994 & Supp. II 1996); see *MCFL*, 479 U.S. at 252-253 (plurality opinion). Contributions aggregating more than $200 from any person to a candidate or political committee must be reported by the recipient. See 2 U.S.C. 434(b)(3). Although respondents argue that coordinated expenditures could be made in a manner that would make it difficult for the recipient candidates to learn of them, and thus to report them (see Resp. Br. 24), that problem inheres in the statute and exists regardless of whether the contributor is an organization, like AIPAC, or an individual.

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For the reasons stated above, and in the opening brief for the petitioner, the judgment of the court of appeals should be vacated and the case remanded with instructions to dismiss for lack of jurisdiction. In the alternative, the judgment of the court of appeals should be reversed.

Respectfully submitted.

SETH P. WAXMAN
Acting Solicitor General

LAWRENCE M. NOBLE
General Counsel
Federal Election Commission

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